*** HON'BLE SRI JUSTICE P.S. NARAYANA**

+ WRIT PETITION NOs. 13050, 13051 and 13063 OF 2006

%Dated 28.06.2006

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W.P.NO. 13050 OF 2006:

Maram Sujathamma

..PETITIONER

VERSUS

$ State Election Commission,
Andhra Pradesh, Boats Club, Secunderabad
Rep.by its Commissioner and two others ..
RESPONDENTS

W.P.No.13051 of 2006:

M. Narasimhulu, S/o. Muna Swamy ..
PETITIONER

Versus

$ State Election Commission,
Andhra Pradesh, Boats Club, Secunderabad
Rep.by its Commissioner and two others ..
RESPONDENTS

W.P.No. 13063 of 2006:

Susheelamma W/o. Venkatramaiah …
PETITIONER

Versus

$ State Election Commission,
Andhra Pradesh, Boats Club, Secunderabad
Rep.by its Commissioner and two others ..
RESPONDENTS

@ Counsel for petitioners: Mr. B. Shiva Kumar.
^ Counsel for Respondents: Mr. P.B. Prabhakara Rao.

< GIST:

> HEAD NOTE:

? Cases referred

1. 1995(3) ALT 217(D.B.)

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 13050 OF 2006

DATED: 28-06-2006

BETWEEN:

Maram Sujathamma, W/o. Sri M. Rami Reddy …Petitioner

And

1. State Election Commission,
   Andhra Pradesh, Boats Club, Secunderabad
   Rep. by its Commissioner and two others …Respondents

W.P.No. 13051 of 2006:

M. Narasimhulu S/o. Muna Swamy …
Petitioner

And

1. State Election Commission,
   Andhra Pradesh, Boats Club, Secunderabad
   Rep. by its Commissioner and two others …Respondents

W.P.No. 13063 of 2006:

Susheelamma W/o. B. Venkatramaiah ... Petitioner

And

1. State Election Commission,
   Andhra Pradesh, Boats Club, Secunderabad
   Rep. by its Commissioner and two others …Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 13050, 13051 and 13063 OF 2006

COMMON ORDER:

W.P.No. 13050 of 2006:

The writ petition is filed for a Writ of Mandamus or any appropriate writ declaring the action of the Returning Officer and the Chief Executive Officer, M.P.T.C. in declaring that the petitioner has withdrawn the nomination filed on behalf of Indian National Congress as illegal and consequently direct the respondents to permit the petitioner to participate in elections under Indian National Congress banner for the elections to the post of Member, M.P.T.C., Bandarlapalli-II segment, scheduled to be held on
02-07-2006 or any other subsequent date and pass such other suitable orders.

It is stated that the first respondent issued election notification for elections of the members of Zilla Parishad on 10-06-2006. It is also stated that the Returning Officer had issued notification, inviting nominations from the proposed contestants on 13-06-2006. It is further stated that the nominations were received during 13-06-2006 to 17-06-

2006, the scrutiny of the nominations was done on
18-06-2006 and the last date for withdrawal of nominations was on 21-06-2006. The elections are scheduled to be held on 28-06-2006 in some areas of State of Andhra Pradesh and on 02-07-2006 in some other areas. The counting of votes is scheduled on 04-07-2006. It is also stated that in respect of Chittoor Mandal Parishad, elections are scheduled to be held on 02-07-2006. It is further stated that in pursuance of the notification, the petitioner filed two sets of nominations on 16-06-2006 under the banner of the Indian National Congress to the post of M.P.T.C. of Bandarlapalli-II segment. It is also stated that 21-06-2006 is the date of withdrawal of nominations. It is further stated that the Indian National Congress had issued 'B' form in her favour and the same was submitted before the Returning Officer on 21-06-2006 at about 2.45 p.m. Since she had filed two sets of nominations, she had withdrawn one set of nomination and submitted 'B' Form obtained from the Indian National Congress. It is also stated that after withdrawal of nominations at 3.00 hours, the list of candidates who were in elections to be displayed. Accordingly, the list was issued wherein her name was figured. Surprisingly, on the next day, i.e. 22-06-2006 a revised list of contesting candidates was issued, wherein her name was not mentioned and no reasons were assigned for deletion of her name. The petitioner had approached the office of the Returning Officer on 22-06-2006, 23-06-2006 and 24-06-2006, but the Returning Officer and other subordinate officers were not available in the office and the reasons for deletion of her name from the list of contesting candidates for M.P.T.C. elections are not forthcoming. It is further stated that on 26-06-2006, she made representation to the Revenue Divisional Authority, Madanapalli, Chittoor District. However, no action had been taken. Hence, questioning the deletion of her name from the list of contesting candidates, the present writ petition is filed.

W.P.NO. 13051 OF 2006:

The writ petition is filed for a Writ of Mandamus or any other appropriate writ declaring the action of the Returning Officer and Chief Executive Officer, ZPTC in declaring that the petitioner has withdrawn the nomination filed on behalf of Indian National Congress as illegal and consequently direct the respondents to permit the petitioner to participate in the elections under Indian National Congress banner for the elections to the post of Member, ZPTC, Ramakuppam scheduled to be held on 02-07-2006 or any other subsequent date and pass such other suitable orders.

It is stated that the first respondent issued election notification for elections of the Members of Zilla Parishad on 10-06-2006. It is also stated that the Returning Officer had issued notification, inviting nominations from the proposed contestants on 13-06-2006. It is further stated that the nominations were received during 13-06-2006 to 17-06-2006, the scrutiny of the nominations was done on 18-06-2006 and the last date for withdrawal of nominations was on 21-06-2006. The elections are scheduled to be held on 28-06-2006 in some areas of State of Andhra Pradesh and on 02-07-2006 in some other areas. The counting of votes is scheduled on 04-07-2006. It is also stated that in respect of Chittoor Mandal Parishad, elections are scheduled to be held on 02-07-2006. It is further stated that in pursuance of the notification, the petitioner filed one set of nomination on 14-06-2006 under the banner of Telugu Desam Party, and another set of nomination on 17-06-2006 under the banner of the Indian National Congress to the post of Z.P.T.C. of Ramakuppam segment. It is also stated that 21-06-2006 is the date of withdrawal of nominations. It is further stated that the Indian National

Congress had issued 'B' form in his favour and the same was submitted before the Returning Officer on 21-06-2006 at about 2.45 p.m. Since he had filed two sets of nominations, he had withdrawn one set of nomination filed under the banner of Telugu Desam Party and submitted 'B' Form obtained from the Indian National Congress. It is also stated that after withdrawal of nominations at 3.00 hours, the list of candidates who were in elections has to be displayed. It is also stated that surprisingly, on

22-06-2006 a revised list of contesting candidates was published in the newspaper, wherein his name was not mentioned and no reasons were assigned for deletion of his name. The petitioner had approached the Chief Executive Officer, Zilla Parishad and also the District Election Authority and appraised them that he had withdrawn only one set of nomination filed under the banner of Telugu Desam Party, and he filed 'B' Form also issued by Indian National Congress, but there was no response from the officers and the reasons for deletion of his name from the list of contesting candidates for Z.P.T.C. elections are not forthcoming. It is further stated that having waited for some time, he addressed a letter to the Chief Election Commissioner and a copy of the same also faxed to the District Election Authority and other concerned officials. However, no action had been taken. Hence, questioning the deletion of his name from the list of contesting candidates, the present writ petition is filed.

W.P.NO. 13063 OF 2006:

The writ petition is filed for a Writ of Mandamus or any appropriate writ declaring the action of the Returning Officer and the Chief Executive Officer, M.P.T.C. in declaring that the petitioner has withdrawn the nomination as illegal and consequently direct the respondents to permit the petitioner to participate in elections under

Indian National Congress banner for the elections to the post of Member, Z.P.T.C., Ramakuppam - I segment, scheduled to be held on 02-07-2006 or any other subsequent date and pass such other suitable orders.

It is stated that the first respondent issued election notification for elections of the members of Mandal Parishad from each territorial constituency, Ramakuppam – I segment on 10-06-2006. It is also stated that the Returning Officer had issued notification, inviting nominations from the proposed contestants on 13-06-2006. It is further stated that the nominations were received during
13-06-2006 to 17-06-2006, the scrutiny of the nominations was done on 18-06-2006 and the last date for withdrawal of nominations was on 21-06-2006. The elections are scheduled to be held on
28-06-2006 in some areas of State of Andhra Pradesh and on
02-07-2006 in some other areas. The counting of votes is scheduled on 04-07-2006. It is also stated that in respect of Chittoor Mandal Parishad, elections are scheduled to be held on 02-07-2006. It is further stated that in pursuance of the notification, the petitioner filed two sets of nominations, one as an independent candidate, and another under the banner of Indian National Congress to the post of Z.P.T.C. of Ramakuppam-I segment. It is also stated that
21-06-2006 is the date of withdrawal of nominations. It is further stated that the Indian National Congress had issued 'B' form in her favour and the same was submitted before the Returning Officer. Since she had filed two sets of nominations, she had withdrawn one set of nomination and submitted 'B' Form obtained from the Indian National Congress. It is also stated that after withdrawal of nominations at 3.00 hours, the list of candidates who were in elections to be displayed. Accordingly, the list was issued wherein her name was figured. Surprisingly, on the next day, i.e. 22-06-2006 a revised list of

contesting candidates was issued, wherein her name was not mentioned and no reasons were assigned for deletion of her name. The petitioner had approached the office of the Returning Officer on 22-06-2006, 23-06-2006 and 24-06-2006, but the Returning Officer and other subordinate officers were not available in the office and the reasons for deletion of her name from the list of contesting candidates for M.P.T.C. elections are not forthcoming. It is further stated that on 26-06-2006, she made representation to the Revenue Divisional Authority, Madanapalli, Chittoor District. However, no action had been taken. Hence, questioning the deletion of her name from the list of contesting candidates, the present writ petition is filed.

All the three writ petitions are being disposed of since almost similar questions are involved in these writ petitions.

Heard Sri B. Shiva Kumar, the counsel representing the writ petitioners and Sri P.B. Prabhakara Rao, the counsel representing all the respondents.

These writ petitions are coming up for admission today. Sri Prabhakara Rao, takes notice on behalf of the respondents 1 to 3 in all these three writ petitions and would maintain that in view of Rule 10 of the A.P. Panchayat Raj Conduct of Elections of Members and Surpanch of Gram Panchayat, members of Mandal Parishad and members of Zilla Parishad Rules, 1984 G.O.Ms.No.755 (hereinafter in short referred as 'the rules' for the purpose of convenience), the withdrawal would be in relation to the candidature and hence the grievance ventilated by the writ petitioners cannot be considered. The learned counsel also placed reliance on a decision of the Division Bench of this court in ***KANDRU VENKATESWARLU v. GOVERNMENT OF A.P., REP.BY ITS SECRETARY FOR***

PANCHAYAT RAJ WING, HYDERABAD [1]***.***

However, Sri B. Shiva Kumar, the learned counsel representing the writ petitioners would contend that it is only *bonafide* mistake and the withdrawals were only as independent candidates in W.P.No.13050 of 2006 and 13063 of 2006, and not as candidates representing the political party and hence in the facts and circumstances, the petitioners may be permitted to contest the elections scheduled to be held on 02-07-2006.

Section 268 of the A.P. Panchayat Raj Act, 1984 (hereinafter in short referred as 'the Act' for the purpose of convenience) deals with the rule making power. In exercise of the powers conferred by Sub Section 1 of Section 268 read with Sections 8, 11, 12, 13, 14 and 15, 148, 149, 151, 153, 154, 171, 179, 182 and 183 of the Act, the rules aforesaid election rules G.O.Ms.No.755, PR RD dated 13-11-1984 were framed.

Rule 10 of the rules dealing with withdrawal of candidature, which reads as hereunder:

> (1) Any candidate may withdraw his candidature by notice in writing in Form 6 signed by him and delivered to the Election Officer either by such candidate in person or by his proposer or by his election agent at any time after the presentation of his nomination paper and not later than 3 O' clock in the afternoon of the third day succeeding that appointed for scrutiny of the nomination whether or not it is a public holiday. The Election Officer shall give a receipt for the same in Form 6 on being satisfied as to the genuineness of the notice of withdrawal and the identity of the person delivering it.

Apart from this aspect of the matter, Sri Prabhakara Rao also had drawn the attention of this Court to Form No.6 under Rule 10(1) of the rules and the said Form No.6 reads as hereunder.

FORM – 6

[See Rule 10(1)]

Notice of Withdrawal

Election to the Office of Members & Sarpanch of Gram Panchayat and Members of Mandal Parishad and Zilla Parishad

To

The Election Officer,

I,…….. a candidate validly nominated at the above election do hereby give notice that I withdraw my candidature.
Place:
Date:

Signature of Candidate

This notice was delivered to me at my office at……(hour) on……..(dated) by……(name).

Date:

Election Officer

On a careful reading of Rule 10 along with Form No.6, it is clear that the withdrawal can be in relation to the candidature only. This question had fallen for consideration before the Division Bench of this court in Kandru Venkateswarlu's case(1 supra) wherein the Division Bench at Para-3 observed as hereunder:

> Under Section 268 of the Andhra Pradesh Panchayat Rahj Act, 1994 the Government has the power to frame Rules inter alia regarding conduct of elections. In pursuance of the power, the Rules. Rule 10 of the Rules deals with withdrawal of candidature saying that any candidate may withdraw his candidature by notice in Form 6 signed by him and delivered to the Election Officer. The rule succeeds Rule 9 relating to the scrutiny of nomination papers providing in sub-rule (5), for publication by the Election Officer of a list of validly nominated candidates and

affixture of it to the notice board in Election Officer's Office in Form 5(2). After the power of withdrawal of the candidature has been exercised by the candidates as in Rule 10, Rule 11 provides for publication of the list of contesting candidates. That stage of the election process hence necessarily comes after the affixture of the list of validly nominated candidates under Rule 9(5) and withdrawals effected thereafter. Rule 11(1) specifically states that the list of validly nominated candidates is to be in Form 8 and is to consist of persons whose nominations have not been rejected and who have not withdrawn their candidature. Sub-rule (3) of Rule 11 provides that if after such publication in Form 8 poll becomes necessary, symbols are to be assigned. A combined reading of the three rules, 9, 10 and 11, hence unmistakably shows that the withdrawal by a candidate relates not to any one of his nominations but to his candidature as a whole and that once the withdrawal option is exercised, the list of valid nominations are to be published without the names of the candidates who have withdrawn. If the Election Officer finds that there is only one validly nominated candidate, there would not be any question of allotment of symbols under Rule 11(3) as no poll would be necessary and the single candidate is to be declared unanimously elected. The matter is clear from the wordings of Rules 10 and 11 itself which only refer to withdrawal of candidature. Even further, Form 6 in which the withdrawal is made is explicit saying in the notice purported to be given to the Election Officer that "I,……, a candidate validly nominated at the above election do hereby give notice that I withdraw my candidature". The signed forms have been also produced before us, and show the withdrawals to be in the same form. There hence cannot be any mistake nor any interpretation made that when a candidate exercises the option to withdraw, the exercise is in respect of any one of the nominations only. Such a meaning goes against the provisions of the rule and the form and the entire

scheme of the election. There is no warrant for it. The stand adopted by the Election Officer is also patently without any rational meaning as if a candidate has filed more than one valid nominations, there could not be any reason why he would withdraw only one of his nominations".

In the light of Rule 10 of the Election rules read with Form – 6 already specified supra and also in view of the decision of the Division Bench referred to supra, this Court is of the considered opinion that there is no illegality in the action of the respondents in this regard. Hence, this Court is not inclined to interfere.

For the foregoing reasons, all these writ petitions being devoid of merits, they shall stand dismissed at the stage of admission. No order as to costs.

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P.S.NARAYANA, J.

Dated: 28-06-2006
rns
Note: L.R. Copy to be marked

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[1] 1995(3) ALT 217(D.B.)